

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Chapter 7

In re: Case No. 13-13016 (SMB)

Rhinoceros Visual Effects and Design LLC,

Debtor.

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**STIPULATION AND ORDER GRANTING RELIEF FROM STAY ALLOWING USE OF
INSURANCE PROCEEDS FOR DEFENSE COSTS AND/OR SETTLEMENT**

WHEREAS, on September 27, 2013, the above-referenced Debtor commenced in this Court a voluntary case under Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and this case was converted to Chapter 7 on September 18, 2014;

WHEREAS, On September 23, 2014, Deborah J. Piazza (the “Trustee”) was appointed the chapter 7 trustee in connection with the Chapter 7 Case;

WHEREAS, the Trustee has asserted certain claims against various individuals who served as employees, officers and/or directors of the Debtor herein and/or of related entities (the “D&O Claims”);

WHEREAS, the D&Os assert that the D&O Claims are covered by an insurance policy, namely Corporate Directors & Officers Liability Policy Number 4000005709-16 (the “D&O Policy”) held by Gravity Visual Effects & Design Ltd. (“Gravity”) through AIG Israel Insurance Company Ltd. (“AIG Israel”);

WHEREAS, the Individual Insureds, as defined under the D&O Policy, dispute the validity of the D&O Claims;

WHEREAS, AIG Israel has advised that it reserves all rights with regard to whether the D&O Claims are covered under the D&O Policy;

WHEREAS, Gravity asserts that the *proceeds* of the D&O Policies do not constitute property of the bankruptcy estate, including under the analysis of the District Courts in *In re First Cent. Financial Corp.*, 238 B.R. 9, 16 (E.D.N.Y. 1999) and *In re Adelphia Communications Corp.*, 298 B.R. 49, 51 (S.D.N.Y. 2003);

WHEREAS, in order to avoid any doubt regarding the need to obtain relief from the stay under section 362(a) of the Bankruptcy Code (the “Stay”) in order to advance Defense Costs, as defined under the D&O Policy, to Individual Insureds in accordance with the terms of the D&O Policy, and/or to fund any settlement of the D&O Claims from the proceeds of the D&O Policy, the parties agree that an order granting relief from any stay should issue, authorizing AIG to advance Defense Costs, with an initial cap on such Defense Costs of \$250,000, but permitting Gravity or the Individual Insureds to seek from the Court a modification of that cap;

NOW, THEREFORE, IT IS STIPULATED AND AGREED by and between Gravity and the Trustee that:

1. The foregoing recitals are hereby fully incorporated into and made an express part of this stipulation and order (this “Stipulation”);
2. To the extent that the Stay applies to Gravity’s Corporate Directors & Officers Liability Policy Number 4000005709-16 (the “D&O Policy”) held with AIG Israel Insurance Company Ltd., that Stay is hereby modified to permit AIG Israel to advance Defense Costs to Individual Insureds, as those terms are defined by the D&O Policy;

3. Defense Costs advanced shall not exceed an initial cap of \$250,000, without prejudice to Gravity or the Individual Insureds seeking from the Court a modification of that \$250,000 cap.

4. Gravity will report on the advancement of Defense Costs, by filing upon the advancement of each \$100,000 of Defense Costs, a notice in the form attached hereto as Exhibit A.

LAW OFFICE OF MATTHEW C. HEERDE

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IT IS SO ORDERED.

Date: **December 6, 2017**
New York, New York

/s/ STUART M. BERNSTEIN
United States Bankruptcy Judge

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Notice of Use of Policy Proceeds

Pursuant to the Stipulation dated _____ in which the Trustee and Gravity Visual Effects & Design Ltd. agreed to the use of policy proceeds for defense costs in conjunction with the defense of certain D&O Claims, and Gravity agreed to report on use of policy proceeds in accordance with certain benchmarks, please take notice that the use of the policy proceeds now exceeds \$100,000 [or \$200k].

Respectfully submitted,

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